

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALVIN JAY BURCHAM,

Defendant-Appellant.

UNPUBLISHED

July 29, 2003

No. 238737

Calhoun Circuit Court

LC No. 99-003066-FH

Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Defendant pleaded no contest to conversion of prepaid funeral funds, MCL 328.232, and was ordered to pay restitution as part of his sentence. He appeals his sentence as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We find no error in the court's order of restitution. The court is required to order restitution to any victim of the defendant's course of conduct that gives rise to the conviction. MCL 769.1a(2); MCL 780.766(2). A victim is "an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime." MCL 769.1a(1); MCL 780.766(1). The individual contract purchasers suffered threatened financial harm because the funds to fulfill the contract were not held in escrow and the account established after the sale of the cemetery was underfunded.

Defendant's claim that restitution was barred by the doctrine of res judicata was not raised below and, thus, has not been preserved for appeal. *People v Hogan*, 225 Mich App 431, 438; 571 NW2d 737 (1997). Further, because the facts necessary for its resolution have not been presented, the Court declines to consider it. *People v Houston*, 237 Mich App 707, 712; 604 NW2d 706 (1999).

Affirmed.

/s/ Brian K. Zahra

/s/ Michael J. Talbot

/s/ Donald S. Owens